

PETITIONER:
THE DISTRICT BOARD, GHAZIPUR

Vs.

RESPONDENT:
LAKSHMI NARAIN SHARMA

DATE OF JUDGMENT:
26/10/1960

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GAJENDRAGADKAR, P.B.
SARKAR, A.K.
SUBBARAO, K.
MUDHOLKAR, J.R.

CITATION:
1961 AIR 356 1961 SCR (2) 81

ACT:
Regulation and Control of Trade-District Board, Power of-If
impliedly repealed-Sanitation, connotation of--U. P.
District Boards Act, 1922 (U. P. X of 1922), ss. 91(q) and
174-U. P. Panchayat Raj Act, 1947 (U. P. XXVI of 1947), ss.
15 and III.

HEADNOTE:

The appellant framed bye-laws for the regulation and control of flour, rice and oil mills under which a licence had to be obtained on payment of licence fee for running a mill. The bye-laws were framed under s. 174 of the U. P. District Boards Act, 1922. The respondent contended that the bye-laws were ultra vires and void as the District Boards had been divested of their powers to regulate and control trade under the District Boards Act on account of s. III of the P. P. Panchayat Raj Act, 1947, which operated in the same field.

Held, that the bye-laws had been validly made and that the District Boards were not divested of their powers to regulate and control trade under the District Boards Act, 1922, by the provisions of U. P. Panchayat Raj Act, 1947. Section 91(q) of the District Boards Act cast a duty on the District Boards to make provisions for regulating offensive, dangerous or obnoxious trades, callings or practices and s. 174(2)(k) specifically empowered District Boards to make bye-laws in this respect. There was no similar duty or power conferred upon Village Panchayats under the Panchayat Raj Act and consequently the question of the later enactment prevailing over the former did

82
not arise. The reference to "sanitation" in s. 15(c) of the Panchayat Raj Act did not cover regulation and control of trade. Though the word "sanitation" in its widest connotation was capable of including this, it was not used in its widest sense in s. 15(c) but only in its ordinary sense in relation to conservancy, drainage and the like. Section III of the Panchayat Raj Act was in general terms, but bye-laws could be framed under it only in respect of the

functions and duties imposed upon a Gram Panchayat under ss. 15 and 16.

Held, further, that the licence fee charged by the District Board could not be struck down on account of fees being charged from the respondent in respect of his mills under the U. P. Rice and Dal Mills Control Order, 1948, and the U. P. Pure Food Act. The licence fee charged by the District Board was for the regulation of obnoxious trades and the purpose of this regulation was different from the purpose for which fee was charged from the respondent under the Essential Supplies Act and the Pure Food Act.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 372 of 1956. Appeal from the judgment and order dated January 18, 1956, of the Allahabad High Court in Special Appeal No. 43 of 1955.

G. C. Mathur, for the appellant.

G. P. Singh and K. P. Gupta, for the respondent.

S. P. Sinha and P. C. Agarwala, for Intervener No. 1.

Radheylal Agarwala and P.C. Agarwala, for intervener No. 2.

Frank Anthony and M. I. Khowaja, for Intervener No. 3.

1960. October 26. The Judgment of the Court was delivered by

WANCHOO J.-This is an appeal on a certificate granted by the Allahabad High Court. The respondent is carrying on the trade of hulling rice, milling grains and extracting oil in village Nandganj within the area of Gaon Sabha Barapur. He obtained licences for the three trades under the United Provinces Rice and Dal Control Order, 1948, as also under the Uttar Pradesh Pure Food Act, 1950. Further the Gaon

83
of Rs. 8/- on each mill within its jurisdiction and the respondent had been paying that as well. In 1953 the District Board, Ghazipur, in which district the village is situate, enforced bye-laws for the regulation and control of flour, rice and oil mills in the rural areas of the district under which a licence has to be obtained by such mills on payment of Rs. 20/- as licence-fee per year per mill. When the respondent was served with a notice to take out a licence for each mill and to pay the licence-fee, he objected to the legality and validity of the levy and thereafter filed a writ petition in the High Court under Art. 226 of the Constitution. His contention in this connection was three-fold, namely-(i) After the constitution of Gaon Sabha Barapur under the U. P. Panchayat Raj Act, No. XXVI of 1947, the District Board had been divested of its power and jurisdiction in the matter of regulation and control of trade under the relevant provisions of the U. P. District Boards Act, No. X of 1922; (ii) the respondent had paid the necessary licence-fees under the U.P. Rice and Dal Control Order, 1948 and the U. P. Pure Food Act, 1950 and could not be asked to pay the licence-fees over again under the District Boards Act; and (iii) in any case the levy was too high and not in proportion to the actual and probable expenses which the District Board would have to incur in controlling or regulating trade and was meant to augment the general revenues of the District Board.

The writ petition was heard by a learned Single Judge of the High Court who appears to have dismissed it in limine by a reasoned judgment negating all the three contentions raised by the respondent. The respondent then went in appeal and the Appeal Court allowed the appeal holding that

in view of s. 111 of the Panchayat Raj Act, the District Board had lost its power to make bye-laws for the regulation and control of trade under s. 174 of the District Boards Act. The Appeal Court was further of the view that the levy was not out of proportion to the expenses to be incurred by the District Board in the matter of regulation and control and was not a tax. It did not decide the third point raised on behalf of the

84

respondent. The District Board then applied for a certificate to appeal to this Court, which was granted and that is how the matter has come up before us.

The main question which falls for consideration in this appeal is whether the view of the Appeal Court that the District Board has lost its power to make bye-laws under s. 174 of the District Boards Act for regulation and control of trade in view of s. 111 of the Panchayat Raj Act, is correct. Learned counsel for the appellant puts his argument on this point in two ways. In the first place, he urges that the Panchayat Raj Act does not contain any provision by which the Gaon Sabha or the Gaon Panchayat has been given the power to regulate or control trade and therefore even if the Panchayat Raj Act is to prevail over the District Boards Act, where the two deal with the same matter, this particular power remains in the District Board as it is not included within the powers exercisable by Panchayats under the Panchayat Raj Act. In the alternative, he urges that the intention of the legislature was not that those provisions of the District Boards Act which are common in the two Acts should be repealed by necessary implication, and therefore the District Board's power to control and regulate trade would remain whatever may be the provision of the Panchayat Raj Act.

We shall therefore examine the first contention raised on behalf of the appellant under this head, for if the Panchayat Raj Act has not provided for the control and regulation of trade by the Gaon Sabha or the Gaon Panchayat, there will be no question of any inconsistency between the District Boards Act and the Panchayat Raj Act and therefore no question of the later Act (i. e., the Panchayat Raj Act) prevailing over the earlier Act (i. e., the District Boards Act). Section 91 of the District Boards Act provides for what may be called compulsory duties of District Boards and cl. (q) of this section lays down that every board shall make reasonable provision within the district for regulating offensive, dangerous or obnoxious trades, callings or practices. Section 106 of the District Boards Act gives power to the Board to charge a fee

85

to be fixed by bye-law for any licence, sanction or permission which it is entitled to grant by or under the District Boards Act. Section 174 gives power to the District Board to frame bye-laws consistent with the Act and with any rules framed by the State Government for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the area and for the furtherance of the administration of the district under the Act. In particular, power is given by s. 174 (2) (k) to the District Board to frame bye-laws for regulating slaughter-houses and offensive, dangerous or obnoxious trades, callings or practices and prescribing fees to defray the expenditure incurred by it for this purpose. It is not in dispute that the District Board has power under these provisions to frame bye-laws for regulation of these trades, (namely, hulling rice, milling grains and extracting oil).

Therefore, unless this power is taken away expressly or by necessary implication by any provision of the Panchayat Raj Act, the District Board would be entitled to frame the bye-laws which it did in 1953 and charge licence-fees thereunder.

Turning now to the Panchayat Raj Act, we find that s. 15 of this Act provides for what may be called the compulsory duties of a Gaon Panchayat while s. 16 provides for what may be called its optional duties. Section 111 gives power to the prescribed authority to make bye-laws for a Gaon Panchayat within its jurisdiction consistent with the Act and the Rules made thereunder for the purpose of promoting or maintaining the health, safety and convenience of persons residing within the jurisdiction of a Gaon Panchayat and for furtherance of the administration of Gaon Panchayats under the Act. The prescribed authority in this case is the Executive Committee of the District Board (see, s. 56 of the District Boards Act) which may be assumed for present purposes to be different from the District Board as such. The contention on behalf of the appellant is that reading ss. 15 and 16 together with s. 111 it is obvious that regulation or control of trades, callings and practices is not within the purview of the Panchayat Raj Act. There

86
is no doubt that neither s. 15 nor s. 16 contains any provision corresponding to s. 91(q) of the District Boards Act. Therefore, prima facie the Panchayat Raj Act has nothing to do with the regulation or control of offensive, dangerous or obnoxious trades, callings or practices and this power of the District Board is unaffected by anything in the Panchayat Raj Act. Learned counsel for the respondent, however, urges that though there is no specific provision relating to such regulation or control in the Panchayat Raj Act in ss. 15 and 16, this matter of regulation and control is impliedly covered by cl. (c) of s. 15 of the Panchayat Raj Act, which enjoins on a Panchayat the duty to make reasonable provision for sanitation and taking curative and preventive measures to remove and to stop the spread of an epidemic. It is urged that sanitation must be given a very wide meaning and that meaning will include the regulation of offensive, dangerous or obnoxious trades. It may be that on the widest meaning of the word "sanitation" such regulation may be included in it; but looking to the scheme of the District Boards Act as well as the Panchayat Raj Act, it is, in our opinion, not correct to give the widest possible connotation to the word "sanitation" in cl. (c) of s. 15. Section 91(m) of the District Boards Act provides for "public vaccination, sanitation and the prevention of disease"; but in spite of this entry relating to sanitation there are other provisions in s. 91 which deal with what would be covered by "sanitation" if it were to be given the widest possible meaning as, for example, cl. (e) relating to construction and repair of public wells, etc. and drainage works and the supply of water from them; cl. (n) relating to provision of a sufficient supply of pure and wholesome water where the health of the inhabitants is endangered by the insufficiency or unwholesomeness of the existing supply, guarding from pollution water used for human consumption and preventing polluted water from being so used; cl. (r) relating to dissemination of knowledge on such matters as disease, hygiene, sanitation, etc. This will show that the word "sanitation" in cl. (m) of s. 91 is not used in its widest sense.

87

Similarly in s. 92 (which provides for optional duties of District Boards), cl. (c) refers to reclaiming unhealthy localities; and cl. (i) to conserving and preventing injury or contamination to or pollution of, rivers and other sources of water supply, which matters would be covered within the wide meaning of sanitation. It is obvious therefore that when the word "sanitation" is used in the District Boards Act it is used in a restricted sense. Similarly in the Panchayat Raj Act cl. (c) of s. 15 mentions "sanitation". Clause (g) relates to regulation of places for the disposal of carcasses and of other offensive matters which would clearly be covered by "sanitation" in its widest sense and would have been unnecessary if sanitation was to be given its widest meaning in this section. Clause (k) of s. 15 provides for regulation of sources of water supply for drinking purpose which would again be included within the widest meaning of the word "sanitation". Clause (r) provides for allotment of places for storing manure which would again be embraced within the widest meaning of the word "sanitation" and need not have been separately provided for, if sanitation in cl. (c) had the wide meaning urged for it on behalf of the respondent. Further s. 16 (which deals with discretionary functions of a Gaon Panchayat) provides in cl. (c) for filling in of insanitary depressions and levelling of land—a clause which would be unnecessary if "sanitation" has the widest possible meaning. Clause (1) of s. 16 provides for regulating the collection, removal and disposal of manure and sweepings and making arrangement for the disposal of carcasses of animals, which again would be covered by cl. (c), if sanitation is to be given the widest possible meaning. Clause (m) provides for prohibiting or regulating the curing, tanning and dyeing of skins within 220 yards of the abadi, which again would be covered by the word "sanitation" if it had the wide meaning urged on behalf of the respondent. It would thus be clear that both in the District Boards Act as well as in the Panchayat Raj Act when the word "sanitation" has been used it has not been used in its widest sense; it seems to have been used in its ordinary meaning i. e., the improvement of sanitary

88

conditions specially with regard to dirt and infection and would thus be confined to matters of conservancy and drainage and the like. In the context therefore of both the District Boards Act and the Panchayat Raj Act, it seems to us that the word "sanitation" as used in s. 91 of the District Boards Act and A. 15 of the Panchayat Raj Act is confined to its ordinary meaning in relation to conservancy and drainage and the like with reference to the necessity of avoiding dirt and disease and cannot be given such a wide meaning as to include control or regulation of trades, callings or practices. Section 18 of the Panchayat Raj Act gives a clear indication that it is the ordinary meaning that is intended by the word "sanitation" in cl. (c) of s. 15. Section 18 deals with improvement of sanitation and provides that a Gaon Panchayat may by notice direct the owner or occupier of any land or building, to close, remove, alter, repair, cleanse, disinfect or put in good order any latrine, urinal, water-closet, drain, cesspool or other receptacle for filth, sullage-water, rubbish or refuse and so on; to cleanse, repair, cover, fill up, drain off, deepen or to remove water from a private well, tank, reservoir, pool, pit, depression or excavation therein which may appear to be injurious to health or offensive to the neighbourhood; to clear off any vegetation, undergrowth, prickly pear or

scrub-jungle; and to remove any dirt, dung, nightsoil, manure or any noxious or offensive matter therefrom and to cleanse the land or building. It must therefore be held that the Panchayat Raj Act does not provide for control and regulation of trades, callings or practices like s. 91 (q) of the District Boards Act.

It is however urged that even though ss. 15 and 16 do not specifically deal with control and regulation of trades, callings or practices, s. 111 is in very general terms and gives powers to the prescribed authority to frame any bye-laws relating to promotion or maintenance of health, safety and convenience of persons residing within the jurisdiction of a Gaon Panchayat. It is true that these words in s. 111 are of wide amplitude; but they cannot, in our opinion, be widened

89

beyond the duties imposed on a Gaon Panchayat or Gaon Sabha under ss. 15 and 16 or any other provision of the Panchayat Raj Act. The bye-laws framed under section 111 which are for the promotion or maintenance of health, safety and convenience have also to be in furtherance of the administration of Gaon Panchayats under the Act. Therefore if Gaon Panchayats have administrative functions under ss. 15 and 16 or any other provision of the Act, bye-laws can be framed under s. 111 for these purposes in order to further the administration of Gaon Panchayats. But, if as we have held, Gaon Panchayats are not invested with the duty to control and regulate trades, callings and practices, there can be no question of framing bye-laws in that behalf under s. 111 on the basis of the wide words used therein. The power to frame bye-laws under s. 111 is, in our opinion, conditioned by the duties and functions imposed on a Gaon Panchayat under ss. 15 and 16 as well as other provisions of the Panchayat Raj Act. It is not in dispute that there is no other provision of the Panchayat Raj Act which imposes a duty on Gaon Panchayats to control or regulate trades, callings or practices and therefore the power under s. 111 does not extend to prescribing bye-laws for that purpose. The only other section to which our attention is drawn is s. 37(d) by which a Gaon Sabha has been given the power to impose a tax on trades, callings and professions, not exceeding such rate as may be prescribed. This in our opinion has nothing to do with the regulation of trades, callings and practices and levying of licence-fees in that behalf. What this provision refers to is what is provided in item 60 of List II of the Seventh Schedule and not fees properly so-called. We are therefore of opinion that as the Panchayat Raj Act does not provide for control or regulation of the nature mentioned in s. 91(q) of the District Boards Act, there is no question of the power of the District Board under s. 174 to frame bye-laws and to prescribe fees in that behalf being taken away by s. 111 of the Panchayat Raj Act. It seems that this aspect of the matter was not argued in the High Court at all and it

90

appears to have been assumed there that the Panchayat Raj Act also provided for the same matter as was covered by s. 91(q) of the District Boards Act and it was probably on that basis that the High Court held that s. 111 of the Panchayat Raj Act prevailed over s. 174 of the District Boards Act. In the view we have taken it is not necessary to consider the alternative argument raised on behalf of the appellant in respect of this point.

This brings us to the point which was not considered by the Appeal Court, though the learned Single Judge had dealt with

it and held against the respondent. That contention is that certain fees are being levied on the respondent in respect of these mills under the U. P. Rice and Dal Mills Control Order, 1948 and the U. P. Pure Food Act and therefore the District Board cannot levy any further licence-fee under s. 91(q) of the District Boards Act read with s. 174. As pointed out by the learned Single Judge, the fees levied under the Control Order of 1948 which depends for its existence on the Essential Supplies Act and under the U. P. Pure Food Act are for different purposes of those Acts. The fee charged by the District Board is for regulation of obnoxious trades and the purpose of this regulation is different from the purpose for which fees are levied under the Essential Supplies Act and the Pure Food Act. Under these circumstances we see no reason for striking down the regulatory provisions made under the District Boards Act and the licence-fee charged thereunder. The fact that there may be some overlapping between the regulatory provisions made under the U. P. Pure Food Act and those made under the District Boards Act can have no relevance on the validity of the bye-laws and the licence-fee charged under them.

In this view of the matter, the appeal is allowed, the order of the Appeal Court set aside and the writ petition dismissed. However, as the point on which the appellant has succeeded in this Court was not specifically raised in the High Court, we order the parties to bear their own costs throughout.

Appeal allowed.

91